



January 24, 2001

Mr. James L. Hall
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2001-0273

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143471.

The Department of Criminal Justice (the "department") received a request for a copy of all documents submitted to the department in response to its solicitation for the Live Scan Project. You indicate that three proposals are responsive to this request, one submitted by the requestor's firm, Identix; the winning proposal, submitted by Digital Biometrics ("DBI"); and one submitted by Litton PRC ("Litton"). You also indicate that the requestor submitted an earlier request for the winning Digital Biometrics proposal.

We note that this office issued Open Records Decision No. 2000-4815 in response to an earlier request by this requestor for the proposal submitted by DBI. You may rely upon that decision in regard to release of the information addressed by that decision (copy enclosed). However, we note that the current request seeks "all documents" related to the subject request for proposals while the earlier request sought only the winning proposal. The current request is therefore broader in scope than the previous request.

In response to the earlier request, DBI submitted comments regarding materials evaluating the capabilities of DBI documents exchanged between DBI and the department subsequent to the delivery of DBI's bid as they relate to information contained in the "Cost Response" binder. Neither DBI nor the department submitted those documents to this office in response to the earlier request or to the current request. We therefore have no basis for determining that those documents may be withheld.

As the Identix proposal was submitted by the requestor's firm, and you raise no exception to disclosure of this information, we assume this information has been made available to the requestor. You assert that the Litton proposal is excepted from disclosure by section 552.110 of the Government Code.

The department provided notice of the pending request for information to Litton. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Act in certain circumstances). Litton did not respond to the notice.

Because Litton did not respond to the department's notice, we have no basis to conclude that this company's information is excepted from disclosure. *See* Open Records Decision Nos. 639 at 4 (1996) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure), 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3 (1990). The information responsive to this request must therefore be released to this requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

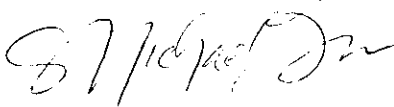
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/er

Ref: ID# 143471

Encl: Submitted documents & ORL 2000-4815

cc: Mr. E. Lee Parsley
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